

HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

SUBTITLE 3 CHILD SUPPORT ENFORCEMENT

CHAPTER 34

PRACTICE AND PROCEDURE FOR ADMINISTRATIVE PROCESS

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## SUBCHAPTER 1

### GENERAL PROVISIONS

§5-34-1 Purpose. This chapter is intended to provide rules of practice and procedure to govern expedited administrative proceedings commenced within the department of the attorney general with the purpose of establishing, modifying, suspending, terminating, and enforcing child support orders while guaranteeing a fair evidentiary hearing pursuant to chapter 576E and, when otherwise applicable, chapter 91, Hawaii Revised Statutes. [Eff 2/13/89; am and comp Oct. 31, 1991] (Auth: HRS §§91-2, 576E-9)(Imp: HRS §91-2, HRS chapter 576E, 45 C.F.R. §303.101)

§5-34-2 Definitions. For the purposes of this chapter:

"Agency" means the child support enforcement agency as defined in section 576E-1, Hawaii Revised Statutes.

"Custodial parent" means the custodial parent as defined in section 576E-1, Hawaii Revised Statutes.

"Debt" means public assistance debt as described in section 346-37.1, Hawaii Revised Statutes.

"Department" means the department of the attorney general.

"Hearings officer" means a hearings officer as defined in section 576E-1, Hawaii Revised Statutes.

"Party" means a person, state, or agency named in a proceeding or any interested person or aggrieved person entitled as of right to participate in the proceeding before a hearings officer.

"Responsible parent" means a responsible parent as defined in section 576E-1, Hawaii Revised Statutes. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-9, 91-2) (Imp: HRS §§576E-1, 91-2)

§5-34-3 Office. The hearings on the islands of Molokai, Oahu, Hawaii, Maui, and Kauai conducted pursuant to this chapter shall be conducted in the offices of the agency in the respective counties or in appropriate spaces as determined by the hearings officer. All communications to the administrative process branch, unless otherwise specifically directed, shall be addressed to:

Administrative Process Branch  
Child Support Enforcement Agency  
Department of the Attorney General  
State of Hawaii  
P.O. Box 1860  
Honolulu, Hawaii 96805-1860

All communications to the hearings officers as authorized by this chapter, unless otherwise specifically directed, shall be addressed to:

Office of Child Support Hearings  
Department of the Attorney General  
State of Hawaii  
680 Iwilei Road, Suite 435  
Honolulu, Hawaii 96817

[Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2)  
(Imp: HRS §91-2)

§5-34-4 Pro se representation. A responsible parent who may be aggrieved by a proposed administrative order may appear on his or her own behalf at the proceedings of his or her own case. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-5 Legal counsel. A responsible parent, at his or her own expense, may be represented by legal counsel at any stage of the proceedings. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-6 Individual representing party. When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the agency or hearings officer, that individual may be required to furnish proof of authorization and qualification to act in that capacity. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-7 Consolidation. The hearings officer, sua sponte, or upon any party's motion timely made and for good cause shown, may consolidate two or more proceedings which involve substantially the same issues, arising out of the same general transaction, or involving the same

person or persons, provided the consolidation shall promote efficiency. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-8 Format and certification of pleadings. (a) Requests for hearings, motions, and other pleadings and copies thereof which are part of the record of a case shall be in writing.

(b) All pleadings shall be signed in black ink by the party filing the pleadings or by the party's authorized agent.

(c) Unless otherwise provided, all pleadings, motions, and other documents shall be filed with the administrative process branch of the agency. All motions and evidentiary documents requested by the hearings officer shall be filed with the office of child support hearings. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-9 Computation of time. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. As used in this rule, "holiday" includes any day designated as such pursuant to section 8-1 of the Hawaii Revised Statutes. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§91-2, 8-1) (Imp: HRS §91-2)

§5-34-10 Hearings officer. (a) In addition to powers partially listed in sections 576E-2 and 576E-10, Hawaii Revised Statutes, the hearings officer shall have the following powers:

- (1) Issue notices;
- (2) Administer oaths and affirmations;
- (3) Consolidate hearings or sever proceedings;
- (4) Subpoena and examine witnesses;
- (5) Issue subpoenas;

- (6) Rule upon offers of proof, receive relevant evidence, and exclude evidence which is irrelevant, immaterial, repetitious, or cumulative;
- (7) Regulate the course and conduct of the hearing, including the application of contempt proceedings;
- (8) Regulate the manner of any examination so as to prevent the harassment, or intimidation, of any witness at the hearing;
- (9) Remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) Hold conferences, before or during the hearing for the settlement or simplification of issues;
- (11) Rule on motions and dispose of procedural matters;
- (12) Conduct hearings and enter orders as authorized under chapter 576E, Hawaii Revised Statutes;
- (13) Dispose of other matters that properly arise in the course of contested proceedings; and
- (14) Dismiss the action whenever it appears by motion of the parties or sua sponte by the hearings officer for good cause shown. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-2, 576E-10) (Imp: HRS §§576E-2, 576E-10, 91-2, 45 C.F.R. §303.101)

§5-34-11 Disqualification of hearings officer. (a) A hearings officer may disqualify himself or herself when the hearings officer's impartiality might be questioned, including but not limited to when:

- (1) The hearings officer has a financial interest in the subject matter in controversy or in a party to the proceeding such that the outcome of the proceeding will be substantially affected; or
- (2) The hearings officer or his or her spouse is related to a party to the proceeding within the third degree.

(b) A hearings officer shall not be disqualified if after disclosing the basis of disqualification on the record, all parties agree the officer's financial interest or relationship is irrelevant to the proceeding. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-12 Ex parte communications. (a) In any administrative proceeding before a hearings officer, no member of the agency or any other government agency shall privately communicate on the merits of the case with any hearings officer, unless specifically provided for by law.

(b) It shall be improper for the department or any person interested in a proceeding to seek to influence the judgment of the hearings officer.

(c) It shall be improper for the agency to disclose or reveal to any hearings officer designated to hear and decide the matter the contents of any investigatory report or documents or copies of the same prepared by the agency, concerning the matter before the hearings officer unless the report or document is provided to all parties and is made a part of the record of the proceeding. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-13 Subpoenas; where provided by law; form.

(a) After the service of a notice and findings of financial responsibility, the hearings officer, sua sponte, or at the request of a party, shall have the power to issue subpoenas requiring the attendance of witnesses or the production of documents at the hearing. The hearings officer may require that any request for the issuance of a subpoena identify with particularity the person to be subpoenaed or the documents desired. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in family court in the state.

(b) Upon motion timely made, or upon the hearings officer's own motion, the hearings officer may quash or modify the subpoena if it is unreasonable or oppressive. Every subpoena shall state the name of the department and the title of the proceeding, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under the person's control at a specified time and place. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-2, 91-2) (Imp: HRS §§576E-2, 91-2)

## SUBCHAPTER 2

### PROCEDURES

#### §5-34-14 Commencement of administrative proceedings.

(a) The agency may, on its own or at the request of a party, initiate an administrative action under chapter 576E, Hawaii Revised Statutes. When the agency initiates such action, it shall prepare a notice and findings of financial responsibility together with a proposed support order which set forth the agency's findings of responsibility, based where applicable on the child support guidelines found in section 576D-7, Hawaii Revised Statutes. The notice shall include the information listed in section 576E-5, Hawaii Revised Statutes. After service of the notice, all payments made which are intended to satisfy the child support obligation alleged in the notice must be made directly to the agency. Payments made to the obligee directly or to any other party will not be credited against the obligation, whether or not such payment is in cash, check, money order, in-kind services, merchandise, or anything else of value.

(b) Any party who objects to all or any part of the notice, findings of financial responsibility, or proposed support order shall have the right, for ten days from the date of service of the notice, to request in writing, a hearing. The request shall be delivered by mail or personally to the agency office that issued the notice.

(c) All parties shall be given written notice of the hearing at least fifteen days before the hearing, which notice shall include the date, time, place and nature of the hearing.

(d) If a party fails to request a hearing in a timely manner, the proposed order shall be reviewed and signed by the director of the agency or designee as the final order and filed in the office of the clerk of the circuit court in the circuit where the order was issued. [Eff 2/13/89; am 727/90; am and comp Oct 31, 1991] (Auth: HRS §§576D-7, 576E-5, 576E-6, 576E-7, 576E-9, 576E-11, 576E-12, 91-2, 91-9) (Imp: HRS §§576E-5, 576E-6, 576E-7, 576E-9, 576E-11, 576E-12, 91-2, 91-9)

§5-34-14.5 Disposition of actions prior to hearing. (a) Following a request for hearing, a hearings officer may grant:

- (1) A waiver of the requested hearing;
- (2) A motion to dismiss; or
- (3) A motion to continue.

(b) The request of waiver or motion to dismiss or continue shall be made on forms supplied by the hearings officer section and completed in a manner prescribed thereon. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-15 Hearings. (a) Unless authorized by the hearings officer, attendance at a hearing shall be limited to parties directly concerned. The hearing shall be recorded manually or by a mechanical, electronic, or other device capable of transcription. Unless otherwise provided, the cost of transcription of the recording shall be paid by the requesting party.

(b) Hearings may be conducted by telephone or other electronic telecommunication methods upon the consent of all parties to the hearing.

(c) Any party desiring a continuance of the hearing shall immediately, upon receipt of notice of hearing, or as soon thereafter as facts requiring such continuance come to light prior to the hearing, notify the hearings officer in writing, who may grant the requested continuance. Additionally, if it appears in the interest of justice, the hearings officer may at any time continue the hearing. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-9, 91-2) (Imp: HRS §§576E-9, 91-2)

§5-34-16 Evidence; discovery; admissibility criteria. (a) All relevant and material evidence is admissible which, in the opinion of the hearings officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the hearings officer shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings.

(b) Documentary evidence may be received in the form of copies and excerpts or incorporated by reference; provided that, upon request, all other parties to the



proceedings shall be given an opportunity to compare the copy with the original.

(c) All evidence material to the issues raised in the hearing shall be offered into evidence.

(d) Every party shall have the right to cross-examine witnesses and to submit rebuttal evidence.

(e) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The hearings officer may use discretion to exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise ground of objection at the time the evidence is offered.

(f) Except as otherwise provided by law, the burden of proof shall be upon the party initiating the proceeding. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-9, 576E-10, 91-2) (Imp: HRS §§576E-9, 576E-10, 91-2)

§5-34-17 Service. The notice and findings of financial responsibility, together with the proposed administrative order, shall be served on the responsible parent by personal service or by certified mail, return receipt requested. If personal service or service by mail is unsuccessful the director of the agency or designee, or hearings officer may authorize service by publication as permitted by statute. The return receipt shall be prima facie evidence of service. After initial service is effected, subsequent service of papers to the responsible parent may be satisfied by regular mail to the parent's last known address. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§571-23, 576E-4) (Imp: HRS §91-2)

§5-34-18 Duties of parties. Unless otherwise provided by this chapter, a party filing a pleading, motion, memorandum, request, document, or other papers shall provide in a timely manner, a copy of the same to each of the other parties to the proceeding, or to an agent or attorney representing the other party. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-19 Consent order. In any administrative proceeding under this chapter, attempts to reach an

agreed disposition are encouraged. A case may be disposed of by consent order which shall be deemed to be a waiver of the request for hearing. The order shall be reviewed and signed by the director of the agency or designee as the final order and filed in the office of the clerk of the circuit court in the circuit court where the order was issued. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-8, 576E-12) (Imp: HRS §91-2)

§5-34-20 Default. If the party requesting the hearing fails to appear at the time and place of the scheduled hearing, the hearings officer may, upon showing of valid notice, review and sign the proposed order as the final order, to be filed in the office of the clerk of the circuit court in the circuit where the order was issued. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-10, 576E-12) (Imp: HRS §91-2, 45 C.F.R. §303.101)

§5-34-21 Decision and order after hearing. After the close of a contested hearing, the hearings officer shall enter an administrative order, together with findings of fact and conclusions of law. The order of the hearings officer shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued. A copy of the filed order shall be mailed to all parties. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-12, 91-2) (Imp: HRS §91-2, 45 C.F.R. §303.101)

§5-34-22 Income withholding order. (a) Whenever an administrative order is entered pursuant to sections 5-34-14(d), 5-34-19, 5-34-20, and 5-34-21 involving a responsible parent who is or will be receiving income, an income withholding order, pursuant to section 576E-16, Hawaii Revised Statutes, shall be concurrently issued. The order shall operate as an assignment to the agency. The order shall include:

- (1) The amount to be withheld;
- (2) The effective date of withholding;
- (3) Sanctions for noncompliance; and
- (4) A notice that the amount of income withheld shall not exceed the maximum amount permitted under the Consumer Credit Protection Act.

(b) An income withholding order shall be signed by the director of the agency or designee hearings officer unless it is being issued concurrently with an order issued pursuant to section 5-34-20 or section 5-34-21, whereupon the income withholding order shall be signed by the hearings officer.

(c) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued. A copy of the filed order shall be served upon the employer by certified or registered mail or by personal delivery. [Eff 2/13/89; am 7/27/90; am and comp Oct 31, 1991] (Auth: HRS §576E-16) (Imp: HRS §91-2, 45 C.F.R. §303.100)

§5-34-23 Modification, suspension, or termination of judicial or administrative orders. (a) The responsible parent, the agency, or the person having custody of the involved child may file a request for suspension, termination, or modification of child support provisions of a court or administrative order with the agency. Such request shall be in writing, shall set forth the reasons for suspension, termination, or modification, including the change of circumstances since the date of the entry of the order, and shall state the address of the requesting party. Once the agency has determined that proceeding as requested is appropriate, the agency shall commence administrative proceedings pursuant to sections 576E-5 through 576E-9, Hawaii Revised Statutes.

(b) Only support obligation payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-14, 91-2) (Imp: HRS §91-2)

§5-34-24 Judicial review. (a) Any party, including the agency, aggrieved by an administrative order is entitled to judicial review in conformance with section 576E-13, Hawaii Revised Statutes.

(b) Any party requesting judicial review shall notify the agency and all other parties to the proceeding of the request in writing. [Eff 2/13/89; am and comp Oct 31, 1991] (Auth: HRS §§576E-13, 91-2, 91-14) (Imp: HRS §91-14)